IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX APPLICATION No 174 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

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COMMISSIONER OF INCOME TAX

Versus

APPOLO VIKAS STEEL PVT.LTD.

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Appearance:

MR MANISH R BHATT for Petitioner

MR. R.K.PATEL WITH MR. B.D.KARIA FOR THE RESPONDENT.

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CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE M.C.PATEL

Date of decision: 10/08/98

ORAL JUDGEMENT (per C.K.THAKKER J.)

We have heard Mr.B.B.Naik instructed by Mr.Manish Bhatt, for the Revenue and Mr.B.D.Karia, learned counsel for the Assessee.

This application is filed under sub-section (2)

of Section 256 of the Income Tax Act, 1961, directing the Income Tax Tribunal, Ahmedabad Bench to make reference on the following question:

> Whether the Appellate Tribunal is right in law and on facts in deleting the additional tax levied under Section 104 of the Act ?

The Tribunal refused to make a reference. It is contended by Mr.B.B.Naik on behalf of the Revenue, that the decision of the Income Tax Appellate Tribunal on quantum of tax is subject matter of reference and application to refer the question for the opinion of this court was allowed by the Tribunal. It was, no doubt, contended by Mr.Karia that an order under Sec.104 of the Act cannot be said to be consequential in nature and the Tribunal by rejecting the application, has not committed any error of llaw.

In our opinion, however, on the facts and in the circumstances of the case and in view of the fact that on the quantum an application is granted and reference is pending, the question of law arises for from the decision of the tribunal for the opinion of this court as referred to above.

The Tribunal is directed to furnish statement of case in respect of the aforesaid questions under Section 256(2) of the Income-tax Act, 1961, expeditiously. Rule is made absolute accordingly with no order as to costs.

Dt. 10.8.1998. (C.K.THAKKER J.)

(M.C.PATEL J.)